

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

Karen White,

Plaintiff,

V.

BMW of North America, LLC,

Defendant.

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CIVIL ACTION NO. 3:12-CV-00115-REP

## **DEFENDANT’S OPPOSITION TO PLAINTIFF’S THIRD MOTION *IN LIMINE***

Plaintiff's Third Motion *in Limine* (Doc. No. 58) seeks to strike Defendant's expert report and exclude testimony relating to the same.<sup>1</sup> Plaintiff's baseless motion fails to provide any justification that warrants the relief requested, misstates facts (as Plaintiff has now admitted) and misrepresents Plaintiff's knowledge to the Court. Therefore, Plaintiff's Third Motion *in Limine* should be denied.

Plaintiff's Third Motion *in Limine* grasps at straws to provide a justification for excluding Mr. Sime's testimony. However, there are no facts or legal justifications to support the motion. First, Defendant timely presented its expert disclosure according to the timelines established by the Scheduling Order issued by the Court. *See* Doc. No. 38. As stated in the Scheduling Order, Defendant was required to identify its expert 45 days prior to the trial date and file a report on the same day – which Defendant did. *Id.* Defendant also identified Mr. Sime in its initial

1 Plaintiff, for the first time in her Reply Brief, identified Mr. Sime and his Expert Report (Defendant's Exhibit A to the Opposition for Summary Judgment) as the subject matter she seeks to exclude in that Motion. It remains unclear how, if at all, Plaintiff's First and Third Motions *in Limine* are in any way different.

disclosures. Plaintiff knew in May that Defendant's expert disclosures were not due until after the close of discovery. If Plaintiff felt that she needed more notice, she should not have waited until the parties were filing motions *in limine* to address the issue. Defendant cannot now be deprived of an expert because Plaintiff finds the schedule inconvenient. Defendant complied with this requirement and also timely supplemented its report as required under Fed. R. Civ. P. 26.

A day after filing Plaintiff's Third Motion *in Limine*, Plaintiff submitted a notice to the Court acknowledging that she falsely accused Defendant of not producing any documents in this case. Yet, Plaintiff did not simply withdraw her Third Motion *in Limine*. Instead, Plaintiff took the opportunity to throw mud at Defendant's production, while failing to acknowledge that Plaintiff never responded to any discovery. Regardless, as Plaintiff now admits, Defendant provided the documents she previously stated she did not receive, which effectively moots any alleged justifications Plaintiff provided in her Third Motion *in Limine*.

Moreover, Plaintiff cannot reasonably claim that she was unaware of Mr. Sime. This case does not represent the first litigation between these parties related to Plaintiff's vehicle. In fact, Plaintiff previously nonsuited a state law action alleging the same causes of action. Importantly, Mr. Sime, Defendant's expert, was identified in that case as an expert and Plaintiff noticed Mr. Sime for a deposition, which was scheduled to be conducted on or about the day on which Plaintiff took the nonsuit. Moreover, Plaintiff cannot complain that she did not realize Mr. Sime was acting in the same role in this litigation.

Because there is no new evidence to exclude and no identifiable failure on the part of Defendant, Plaintiff's Third Motion *in Limine* should be summarily dismissed.

Dated: September 10, 2012

/s/ Rachel Elsby  
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*Counsel for Defendant BMW of NA, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September 2012, I electronically filed the foregoing DEFENDANT'S OPPOSITION TO PLAINTIFF'S THIRD MOTION *IN LIMINE* with the Clerk of Court using the CM/ECF system which will send notification of such filing via Notification of Electronic Filing (NEF) to the following:

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